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UNITED STATES CIRCUIT COURT OF APPEALS—SECOND CIRCUIT.

Opium—Evidence Admissible in a Prosecution for Manufacturing Smoking Opium.TAM SHI YAN *v.* UNITED STATES, 224 Fed. Rep., 422. (June 22, 1915.)

Evidence tending to prove that the defendant is an opium smoker is properly receivable in a prosecution for unlawfully manufacturing smoking opium.

The defendant was convicted in the United States District Court for the Southern District of New York, of unlawfully manufacturing smoking opium. One ground of his appeal to the circuit court of appeals was the admission in evidence of a letter which was in the handwriting of the defendant but was not signed and had never been sent. On this point Judge Lacombe, in delivering the opinion of the court, said:

“The unsigned letter was found in defendant’s pocket. It was apparently written to some friend, who had urged him to cease smoking opium, and contained the sentence: ‘I have tried to break myself of the habit of smoking opium, but can not.’ Upon cross-examination of the defendant, counsel for the Government asked him if he ever smoked opium, to which he answered in the negative. Objection was therefore raised to the introduction of the statement in the letter above quoted, on the ground that the smoking of opium by defendant was a collateral matter; that, having asked the defendant if he did smoke, counsel for the Government was bound by his answer, and could not contradict such answer by introduction of the letter or in any other way. We do not think the matter inquired about was a collateral matter. An opium smoker can easily make his own mixture from crude opium or yen shee. It is a relevant circumstance, if it can be shown, that a man in whose possession appropriate materials and utensils are found is himself a smoker, and therefore under a temptation to supply himself with smoking opium.”